

# STATE OF COLORADO FISCAL RULES

## ***CHAPTER 2: DISBURSEMENT***

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## Rule 2-1

### *PROPRIETY OF EXPENDITURES*

#### *RULE:*

All expenditures by State Agencies shall meet the following standards of propriety:

- .01 Are for official State business purposes only.
- .02 Are reasonable and necessary under the circumstances.

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## Rule 2-2

### *COMMITMENT VOUCHERS*

#### *AUTHORITY*

24-30-202, C.R.S. (State Controller Authority)

#### *DEFINITIONS:*

**Commitment Voucher** - A purchase order, a state contract, an approved travel authorization, an advice of employment, or any other document appropriate to the transaction prescribed by the State Controller, which provides support that an obligation of the state is being charged to the appropriate account and purchasing requirements have been satisfied. Commitment vouchers also include by way of illustration: grant contracts, license agreements, parking license agreements, and any other contract involving the payment of state funds.

**Vendor Agreement** – A form provided by a vendor containing contractual terms and conditions relating to the goods and/or services to be provided.

#### *RULE:*

No disbursement of funds shall be made by any State Agency unless it is supported by a commitment voucher. The following commitment vouchers are provided for by statute and shall be used as support for the indicated disbursements: a state contract shall be used as defined below.

Purchase orders shall be used as defined below. Advices of employment are to be used to pay the salaries of state employees. Travel authorizations and travel expense reports are to be used for any travel, lodging, or meal expenses incurred by state employees while in travel status.

The following commitment vouchers, as are appropriate to the transaction, are authorized by the State Controller and shall be used as support for State Agency obligations that are not required to be supported by a state contract, purchase order, advice of employment, or a travel authorization or expense form: Invoice, billing, receipt, statement, court order or other written authorization for disbursement that describes goods or services being purchased or other reason for the disbursement and the amount to be paid.

Contracts shall be used as commitment vouchers when purchasing or leasing goods and services as required by fiscal rule 3-1. If a contract is not required, a purchase order shall be used as a commitment voucher to support disbursement of funds for goods or services costing more than \$5,000 except that purchase orders need not be written for the following disbursements:

- ♦ Payroll related disbursements (withholding, authorized benefits, etc.).
- ♦ Disbursements for financial aid or tuition assistance programs.

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- ♦ Disbursements for water, gas, electric, and customary local and long distance telephone service including pagers and cell phones.
- ♦ Disbursements for dues, membership fees, subscriptions, and conference registration fees.
- ♦ Disbursements for postal and other delivery charges including messenger fees.
- ♦ Disbursements for routine internal services provided by a State Agency (e.g., printing services and materials ordered from the Division of Central Services, Capitol Complex lease payments, or legal services provided to State Agencies by the Department of Law.).
- ♦ Disbursements for intra-agency or intra-institution purchases.
- ♦ Payments from a state program to individuals qualified for those program benefits.
- ♦ Payments calculated by a State Agency for obligations to be paid as required by a program within that State Agency. (e.g., formula distributions, other distributions required by regulatory or statutory formulas.)
- ♦ Other disbursements as approved in writing by the State Controller.

A State Agency may establish more restrictive thresholds for requiring purchase orders and contracts if they believe it is in the best interest of the state.

### **Vendor Agreements**

A vendor agreement shall not be executed in lieu of a purchase order or state contract, where one is required, but may be included as an attachment to the state commitment voucher.

Chief fiscal officers or procurement officers may authorize individuals to execute vendor agreements up to \$5,000, when there is no requirement that a state commitment voucher (i.e. state contract or purchase order) be executed for the purchase of the goods or services and **all** of the following conditions apply.

a. All terms and conditions in the vendor agreement have been reviewed by, authorized by, and the agreement signed by the agency's chief financial officer (or an authorized agency official, purchasing agent or State Controller contract signatory).

b. All terms and conditions that put the state at risk of paying more than the agreed price for the goods or services have been deleted from the agreement, except that the agreement may specify reasonable cancellation provisions or other commercially reasonable terms defining liquidated damages, rights, or obligations because of breach of the agreement.

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c. All terms requiring that the state indemnify or hold harmless the vendor are deleted from the agreement.

d. All terms and conditions in the agreement limiting the liability of the vendor are deleted from the agreement. State Agencies may agree to commercially reasonable limitation of liability/remedies provisions, or exclusion of consequential damages, so long as in the case of transactions in goods involving tangible risk from the nature of the goods, and in the case of all services, limitations of liabilities or exclusion of consequential damages exclude from their provisions damages and claims arising out of bodily injury (including death) and damage to tangible property.

e. All charges including taxes and incidentals are stated in the agreement.

f. An agreement for the use of vendor's facilities shall contain a provision stating that the State is liable only for such damages as are caused by its employees, guests or invitees, reasonable wear and tear excepted. Any provision to the contrary shall require prior approval by the Attorney General or designated reviewing Assistant or Special Assistant Attorney General.

g. Provisions providing for other than "Colorado" choice of law and venue shall require prior approval by the Attorney General or designated reviewing Assistant or Special Assistant Attorney General.

h. All amendments, changes, and deletions shall be in writing and approved by an authorized state official.

i. The agreement is complete and contains all attachments and schedules, which may be relevant to the agreement.

### **On-line Vendor Agreements**

The same authority that is required for state contracts and other commitment vouchers is required to enter into on-line vendor agreements including software licenses that are subject to these rules. Unless the terms of an on-line vendor agreement are consistent with the requirements of this rule, State Agencies shall not enter into an on-line vendor agreement, prior to it being reviewed for legal sufficiency by the Attorney General or designated reviewing Assistant or Special Assistant Attorney General. Only the State Controller or delegate shall approve on-line vendor agreements.

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## **State Purchase Orders**

When a purchase order is issued by a State Agency or required by these Rules, additions or changes to the approved, standard terms of the purchase order (see Appendix A to this chapter) shall be made consistent with the preceding rules so long as the changes are approved by a procurement officer or delegate in purchasing agencies, or a delegated purchasing agent in non-delegated purchasing agencies, or the State Purchasing Director or delegate. Further, the following rules govern modifications to the terms of the purchase order:

a. No changes to the clauses governing Changes, Vendor Offset, Assignment and Successor, Independent Contractor, or Funds Availability may be made without State Controller approval;

b. No changes to the Indemnification, Choice of Law, and Non-discrimination provisions may be made without legal review and written approval by the Attorney General or designated reviewing Assistant or Special Assistant Attorney General.

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## Rule 2-3

### *RECEIVING REPORTS*

#### *RULE:*

Receiving reports shall be prepared for all goods and services received, showing actual quantities, any unsatisfactory condition, and compliance with specifications, prior to a voucher being processed for payment.

#### *EXCEPTIONS TO RULE:*

- .01 A receiving report need not be prepared for personal service expenditures.
- .02 When an adequate system of internal accounting and administrative controls exists to provide sufficient verification that goods or services were received, a State Agency may not require a certified receiving report.

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## Rule 2-4

### *PURCHASE DISCOUNTS*

#### *RULE:*

Payments shall be processed in a timely manner and made within the allowable discount period to ensure the State takes advantage of purchase discounts.



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## Rule 2-5

### *INTEREST PAYMENT ON DELINQUENT PAYABLES*

#### DEFINITIONS:

**Payable** - A payable is a liability incurred by the State. A liability shall arise upon receipt of supplies and services and a correct notice of the amount due. A liability shall not arise if a good faith dispute exists as to the State Agency's obligation to pay all or a portion of the liability.

**Delinquent** - A payable is delinquent if a disbursement is not made within forty-five days after a liability arises, unless the time of payment has been otherwise provided in the contract or purchase order.

#### RULE:

State Agencies shall process invoices and other notices of liability as efficiently as possible in order to ensure payment in accordance with contractual or invoice terms, and in the absence of such terms, as soon as possible, or in accordance with statutory provisions. A delinquent payable shall be assessed interest as required by 24-30-202(24), C.R.S.

All written contracts and purchase orders shall provide for a reasonable time of payment considering the nature of the goods or services provided and review and approval required for payment. Interest shall be as stated in the contract or purchase order, or shall be assessed as provided by statute.

If no time for payment has been provided for in writing, interest on the unpaid balance shall be calculated beginning with the forty-sixth day after the liability for such payment arises under this Fiscal Rule.

Payment of the interest liability incurred under this Fiscal Rule shall be processed on a separate voucher. The voucher shall be supported by a written claim, prepared by the State Agency or the vendor, referencing the delinquent payment, the number of days of interest to be paid, and the applicable interest rate. Such claims may be modified by the State Agency to adjust payments to include such items as additional interest due for time required to process interest payments.

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## Rule 2-6

### *INTERAGENCY PURCHASES AND PAYMENTS*

#### RULE:

A State Agency shall make payment for purchases of goods and services from another State Agency within 30 days after receipt of a valid invoice. Where possible or practical payments shall be made by an interagency document in lieu of a State warrant.

#### *Disputes Arising from Interagency Purchases*

If a dispute arises as a result of an interagency purchase, the following steps will be used to resolve the dispute:

- .01 The State Agency disputing the charge shall notify the State Agency providing the goods or services and attempt to resolve the dispute. If necessary, the chief executive officer of the State Agencies involved shall assist in the resolution.
- .02 If the State Agencies involved cannot reach a satisfactory resolution, the State Agency disputing the charge shall within 30 days of the date of the last meeting held to resolve the dispute, petition the State Controller to resolve the dispute.
- .03 If the State Controller is petitioned to resolve the dispute, the decision of the State Controller will be rendered within a reasonable time and shall be final and binding on all parties concerned.

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## Rule 2-7

### *OFFICIAL FUNCTIONS AND TRAINING FUNCTIONS*

#### DEFINITIONS:

**Official Function** - A meeting, conference, meal, or other function which is hosted by the chief executive officer, or representative, of a State Agency, attended by guests and/or State employees, and held for official State business purposes.

**Training Function** - A meeting, conference, or other function which is hosted by a State Agency, attended by customers of the State and/or State employees, and held to enhance staff knowledge or to educate customers of the State or State employees, that are affected by the State Agency's operations or regulations. Training functions should have a written agenda, study materials, and be led by an identified presenter.

#### RULE:

Official Functions and Training Functions shall be held to achieve program objectives and shall be limited to reasonable and actual costs. The attendance of State employees at these functions shall be kept to a minimum and shall include only those individuals directly related to the purpose of the function. Expenditures shall be kept to a minimum as they have the potential of being perceived to be for personal benefit and an abuse of public funds. Official Functions shall be hosted by the chief executive officer of a State Agency or by a representative of the State Agency that has been delegated authority by the chief executive officer to host such functions.

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## Rule 2-8

### *MISCELLANEOUS COMPENSATION AND OTHER BENEFITS (PERQUISITES)*

#### AUTHORITY:

24-2-103, C.R.S. (Compensation for State Employees)

#### DEFINITIONS:

**Benefits** - Any pecuniary or material advantage provided by the State to a State employee other than salary, leave, incentives, awards, retirement benefits, insurance benefits, and travel reimbursements. Incentive awards, salary increases and fringe benefits established pursuant to CRS 24-50-104(8) and (9) are not considered perquisites under this Fiscal Rule.

**Economic Rent Study** - A study conducted by a State Agency to determine the rent to be charged for a State-owned house or dwelling. The purpose of the study is to determine the rental rate the house or dwelling would command if available on the open market.

**Limitations Placed on Employees** - Limitations placed on a State employee as a condition of employment may include that the employee is required to live in the State facility, that the employee is required to be available twenty-four hours a day to perform the assigned duties, or that the employee is required to live in close proximity to the State facility in order to provide protection or discourage trespassers from entering the property.

**Location of Work Place** - The location of the work place assigned may vary from a metropolitan area where housing is readily available to a remote area that is difficult to reach and has no housing other than State furnished housing available.

#### RULE:

An employee of the State shall not receive any type of benefit by virtue of their position unless such benefit is provided by State Statutes or State Fiscal Rule. An employee shall not have the authority to grant any perquisites, nor shall any employee receive any perquisite except as provided by State Statute or State Fiscal Rule. Monetary allowances shall not be given to employees in lieu of benefits, except as provided by statute or approved by the State Controller. Where State statutes provide allowances for maintenance and ordinary expenses incurred in the performance of duty, it is the responsibility of the chief executive officer of the State Agency to establish specific expenses that are covered by the allowance so that the same expenses are not also directly reimbursed.

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## Miscellaneous Compensation

### .01 Honorariums

State officials and employees may be asked to address an audience for which they receive an honorarium. If such speaking engagements occur outside normal working hours, or their normal work load, or while on annual leave, and there is no cost to the State for travel expenses, the official or employee may retain the honorarium. However, if the engagement occurs during normal working hours, or within their normal work load, as any other duty, the honorarium is to be turned over to the State. Any travel expenses related to the engagement would then be valid expenses for reimbursement by the State.

### .02 Over-payments

Through error, a State Employee may be paid more than is due. When the error is detected, provisions shall be made for the repayment of the overpayment.

If the overpayment is nominal, it shall all be deducted from the employee's next paycheck. However, in some cases the overpayment may be significant and require a repayment schedule extending over a period of time. The chief executive officer, or a delegate, of the State Agency shall establish a repayment schedule based on the particular facts involved in each case. Any repayment schedule extending for more than six months shall be approved by the State Controller.

An employee's maximum liability for repayment, should an error go undetected for over a two year period, shall be limited to the total amount of the overpayment for the first two years in which the employee was overpaid.

## Other Benefits (Perquisites)

### .01 Clean Air Transit Benefit for State Employees

To promote the State's mission of mitigating traffic congestion and creating clean air solutions, and to help equalize benefits for those State employees that do not receive free parking, the executive director of a State department, or the president or chancellor of an institution or campus of an institution of the Department of Higher Education (referred to as a State Agency for this Rule) may offer a Clean Air Transit Benefit to their employees. If offered by a State Agency, the benefit shall be offered on an equal basis to all permanent full-time employees within the geographic area served by the mass transit provider and also, if deemed appropriate by such State Agency, may be offered on an equal basis to all part-time employees within the same geographic area. Further, where a State Agency has employees in different locations, the benefit shall be offered based upon the applicable price structure

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of the mass transit provider for each of those specific locations. The Clean Air Transit Benefit may be the total cost of using mass transit or a portion of the total cost.

Prior to offering the benefit, the State Agency shall develop an implementation plan. The plan shall contain the number of employees expected to receive the benefit, the estimated cost, if any, to be paid by the employee, and the estimated fiscal impact on the State Agency. Any contract between the State Agency and the mass transit provider shall be approved by the State Controller.

Each State Agency providing the Clean Air Transit Benefit for their employees shall maintain records showing the actual number of employees receiving the benefit, the actual cost, if any, paid by the employee and the cost to the State Agency for providing the benefit.

### .02 Events Sponsored By State Agencies

A reasonable discount may be offered by a State Agency to officials and employees to improve attendance or participation in State sponsored events. Examples included discounts on admission to athletic games and cultural, educational, recreational, or other events.

Such discounts shall generally be offered on a first come first served basis, except that a State Agency may reserve a specified and reasonable number of admissions to particular events to be distributed on a targeted basis for the purpose of public relations or alumni relations, or for the purpose of student or employee recruitment. The chief executive officer of the State Agency or a delegate shall approve in writing all plans for discounted admissions.

### .03 Meals

Meals prepared at State dining facilities are primarily for the benefit of the students, patients, or inmates housed at these facilities. However, meals may be provided to State employees working at these facilities and guests visiting these facilities. When a meal is provided to State employees or guests, the amount charged for the meal shall be established to at least recover the full cost of the meal. If an employee is required to eat at a State facility, the amount charged for the meal shall be 50% of the full cost of the meal as determined above.

The amount charged for the meals provided shall be approved annually by the chief executive officer of the State Agency. The chief executive officer, or a delegate, may establish separate meal rates for each facility or a single rate for all their facilities. Adequate documentation shall be maintained to substantiate the cost charged for the meals provided.

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### .04 Instructional Courses and Job Related Training

Job related and career enhancement courses may be provided to State employees at no cost or at a reduced cost as authorized by their State Agency. Written approval shall be obtained by the State employee from the chief executive officer, or a delegate, of the State Agency providing this benefit prior to enrollment. Only courses that will benefit the State and enhance the employee's performance shall be approved.

### .05 State Owned Housing Provided to State Employees

A State Agency may provide housing for a State employee where State-owned facilities are available and it is in the best interest of the State. The rent charged shall be based on the economic rent determined by the State Agency and shall take into consideration any limitations placed on the employee as a condition of employment, location of the employee's work place, and other factors deemed appropriate by the State Agency.

An Economic Rent Study shall be conducted prior to the house or dwelling being offered for rent to a State employee. A new Economic Rent Study shall be conducted on or before July 1, every three years thereafter. The rent charged shall be reviewed and if necessary, adjusted on an annual basis. The rent charged for each house or dwelling shall be approved in writing on July 1 of each year by the chief executive officer, or a delegate, of the State Agency.

State Agencies shall execute a rental agreement with the State employee and make payroll deductions for the rent. If the rented unit does not have separate utility meters, the State Agency shall also make payroll deductions for the estimated utility costs. The State Agency shall maintain adequate documentation to support the rent and utility costs assessed for each house or dwelling.

### .06 Temporary Housing Provided to Visitors and Guests

Where space is available, temporary housing may be provided to visitors and guests by a State Agency with the approval the chief executive officer, or a delegate. The charge for such accommodations shall be set at an amount which will at least recover all direct and indirect costs and be reasonable in comparison to the charge for similar housing, if such housing is available. The State Agency shall maintain adequate documentation to substantiate the cost charged for the housing provided.

### .07 Uniforms and Maintenance of Uniforms

Uniforms required to be worn by State employees and the necessary maintenance of these uniforms may be provided to the employee by the State Agency at no charge, or at a reduced charge, or through a uniform allowance.

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### .08 Bookstore Discounts

Discounts not to exceed 10% of retail price may be authorized by each institution for its faculty members and employees for purchases at its bookstores.

#### EXCEPTIONS TO RULE:

- .01 The governing boards of institutions of higher education, consistent with policies developed by the Commission on Higher Education and approved by the State Controller, may provide housing or a housing allowance for the chief executive officer of a State college or university as part of their employment Contract.
- .02 Self-liquidating facilities such as faculty apartments and student housing or trailer houses used as temporary housing at remote work place stations are exempted from this Fiscal Rule.



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## Rule 2-9

### *MOVING AND RELOCATION*

#### AUTHORITY:

24-50-134, C.R.S. (Moving and Relocation Expenses)

#### DEFINITIONS:

**Household Effects** - Household or personal effects such as furniture, clothing, musical instruments, household appliances, foods, and other items which are usual and necessary for the maintenance of a household.

**Installation** - Normal hookup of appliances to existing utilities. It does not include adding wiring, plumbing or vents.

#### APPLICABILITY:

This Fiscal Rule applies only to employees in the State Personnel System.

#### RULE:

A State Agency shall not reimburse or pay moving expenses for a State employee when the move is made solely for personal reasons. Moving expenses shall be authorized by the chief executive officer, or a delegate, of a State Agency if the move of residence is occasioned by a change in assignment, a promotion, or for another reason related to the employees duties. This rule does not apply to new hires.

#### *Reimbursement for Moving Expenses and Allowances*

##### .01 Moving of Household Effects - Commercial Mover

State payment shall be allowed for the necessary expenses incurred for the packing, insurance, transportation, storage in transit not to exceed thirty days, unpacking, and installation at the new location of an employee's household effects.

State payment shall not be made for moving household effects in excess of ten thousand pounds net weight for those with dependents and five thousand pounds net weight for

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those without dependents. Any expenses, including insurance for household effects exceeding the weight limitations shall be borne by the employee being moved. Claims shall be accompanied by at least two competitive bids and State payment shall be made at the rates proposed in the lowest responsible bid. If a move is billed at an hourly rate, the carrier shall weigh the items moved and this weight shall be used to apply the above weight limitations.

### .02 Moving Mobile Homes and House Trailers

State payment shall be allowed for charges by commercial vendors for towing of mobile homes or house trailers containing the household effects of a State employee.

Towing charges may include such additional items as labor and incidental material charges for packing, tie down of household effects, removal and reattachment of skirts, and utility costs for disconnecting and reconnecting from existing utilities. It does not include the costs of concrete pads or additional labor or supplies to add or modify connections for plumbing or electrical service. Claims shall be accompanied by at least two competitive bids and State payments shall be made at the rates proposed in the lowest responsible bid.

### .03 Employee Moves Household Effects

A State employee may prefer to move household effects by rental trailer or truck in lieu of using a commercial mover. Two responsible bids shall be required for reimbursement of the rental trailer or truck if the cost exceeds \$1,000.

If the employee chooses to move household effects and requests reimbursement for moving expenses from the State, two responsible bids shall be obtained from a commercial mover, prior to the move. The employee shall be reimbursed one-half of the lowest responsible bid for commercial moving not to exceed \$1,500 and be reimbursed for the rental trailer or truck at the lowest responsible bid if required. This provision may also apply in certain circumstances when the employee's mobile home or house trailer cannot be used to move household effects.

Mileage allowance for one personal automobile shall be authorized and reimbursed at the statutory rate.

An employee shall receive the per diem allowance up to a maximum of thirty days for necessary expenses incurred while locating permanent residence at the new location. The employee may exclude interruptions caused by sick leave, vacation, other authorized leave of absence, or ordered travel. Reimbursement shall not exceed the travel rates authorized by the Fiscal Rules.

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Per diem shall consist of lodging, meals, and other miscellaneous allowances as provided in these Fiscal Rules.

Any employee required to take another position within the State system and relocate due to the layoff process shall be allowed to claim reimbursement for moving expenses. Costs of the move shall be paid by the State Agency laying off the employee.

*EXCEPTION:*

See CRS 33-1-120.5(4) for special provisions for Division of Wildlife personnel.

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## Rule 2-10

### *ENCUMBERING OF COMMITMENTS*

#### DEFINITIONS:

**Encumbrance** - An amount reserved on the State Financial System or an approved State Agency accounting system to meet a formal obligation of the State, which should precede the recording of the expenditure and the actual disbursement of funds.

#### RULE:

All purchase orders and contracts required to be written in accordance with fiscal rule 2-2 shall be encumbered.

#### EXCEPTIONS TO RULE:

Agreements for the purchase of routine internal services from a State Agency need not be encumbered.

Agreements between State Agencies that are charged to a special line item appropriation dedicated to that commitment need not be encumbered (e.g., Capitol Complex leases, Attorney General Legal Services).

## PURCHASE ORDER TERMS AND CONDITIONS

1. **Offer/Acceptance.** If this purchase order refers to your bid or proposal, then this purchase order is an ACCEPTANCE of your OFFER TO SELL in accordance with the terms and conditions of the IFB/RFP, as stated in your bid. If no bid or proposal is referenced, the purchase order is an OFFER TO BUY, subject to your acceptance, which must be demonstrated by either your performance of the purchase order or by a formal acknowledgment in writing. Any COUNTER-OFFER TO SELL is automatically construed as a CANCELLATION of this purchase order unless a change order is issued accepting a counter-offer. In the event vendor form(s) or part(s) of forms are included in, or as an attachment to, any bid, proposal, offer, acknowledgment, or otherwise, vendor agrees that, in the event of inconsistencies or contradictions, the terms and conditions of the solicitation document and this purchase order shall supersede and control over those contained in the vendor's form(s) regardless of any statement to the contrary in a vendor form(s). Unless the purchasing agent specifically agrees in writing through overt reference or other express written indication of assent, terms and conditions on vendor forms regarding choice of law, venue, warranty disclaimer or exclusion, indemnification or limitation of liability shall be of no effect.

2. **Safety Information.** All chemicals, equipment and materials proposed and/or used in the performance of this purchase order must conform to the standards required by the William-Steiger Occupational Safety and Health Act of 1970. Bidders must furnish all Material Safety Data Sheets (MSDS) for any regulated chemicals, equipment or hazardous materials at the time of delivery.

3. **Changes.** The vendor agrees to furnish the products and/or services in strict accordance with the specifications, and at the price set forth for each item. Nothing in the purchase order may be added to, modified, superseded or otherwise altered except in writing signed by an authorized representative of the state agency purchasing office and acknowledged by the vendor. Each shipment received or service performed shall be only upon the terms contained in the purchase order, notwithstanding any terms that may be contained in any invoice or other act of vendor other than acknowledgment of a written change order to the purchase order.

4. **Delivery.** Unless otherwise specified, in the solicitation or in this order, delivery shall be F.O.B. destination. In its acceptance of any quotation offer, the state agency is relying on the promised delivery date, installation, or service performance as material and basic to its acceptance. In the event of vendor's failure to deliver or perform as and when promised, the state agency reserves the right to cancel its order, or any part thereof, without prejudice to its other rights, and vendor agrees that the state agency may return all or part of any shipment so made, and may charge vendor with any loss or expense sustained as a result of such failure to deliver or perform as promised. Time is of the essence.

5. **Rights In Data, Documents, and Computer Software or Other Intellectual Property (State Ownership).** Unless otherwise agreed in writing, any software, research, reports, studies, data, photographs, negatives or other documents, drawings or materials delivered by vendor in the performance of its obligations under this purchase order shall be the exclusive property of the State. The ownership rights described herein shall include, but not be limited to, the right to copy, publish, display, transfer, prepare derivative works, or otherwise use the works.

6. **Quality.** The State will be the sole judge in determining "equals" with regard to quality, price and performance. All products delivered shall be newly manufactured and of the manufacturer's current model, unless otherwise specified.

7. **Warranties.** All provisions and remedies of the Uniform Commercial Code relating to both implied and expressed warranties are herewith referred to and made a part of these Terms and Conditions and are in addition to any warranties stipulated in the specifications.

8. **Inspection and Acceptance.** Final acceptance is dependent upon completion of all applicable inspection procedures. Should the products or services fail to meet any inspection requirements the State may exercise all of its rights, including those provided in the Uniform Commercial Code. In the case of services, the State reserves the right to inspect services provided under this contract at all reasonable times and places. "Services" as used in this clause includes services performed or tangible material produced or delivered in the performance of services. If any of the services do not conform with purchase order requirements, the State may require the vendor to perform the services again in conformity with purchase order requirements, with no additional payment. When defects in the quality or quantity of service cannot be corrected by re-performance, the State may (1) require the vendor to take necessary action to ensure that the future performance conforms to purchase order requirements and (2) equitably reduce the payment due the vendor to reflect the reduced value of the services performed. These remedies in no way limit the remedies available to the State in the termination provisions of this purchase order, or remedies otherwise available at law.

9. **Cash Discount.** The cash discount period will start from date of receipt of acceptable invoice, or from date of receipt of acceptable products/services at the specified destination by an authorized agency representative, whichever is later.

10. **Taxes.** The state agency, as purchaser, is exempt from all federal excise taxes under Chapter 32 of the Internal Revenue Code [No. 84-730123K] and from all state and local government use taxes [C.R.S. 39- 26- 114(a) and 203, as amended]. Tax exempt numbers for the specific state agency may be found elsewhere in this document. Vendor is hereby notified that when materials are purchased for the benefit of the State, such exemptions apply except that in certain political subdivisions (for example - City of Denver) the vendor may be required to pay sales or use taxes even though the ultimate product or service is provided to the State. These sales or use taxes will not be reimbursed by the State.

11. **Prompt Payment.** State law and regulations provide that vendors will be paid within forty-five days after receipt of products or services and a correct notice of amount due, unless otherwise agreed to by contract or special conditions of the purchase order. A State liability not paid within forty-five days is considered delinquent and, unless otherwise agreed to, interest on the unpaid balance shall be paid beginning with the forty-sixth day at the rate of one percent per month on the unpaid balance until paid in full. A liability shall not arise if a good faith dispute exists as to the agency's obligation to pay all or a portion of the liability. Vendors shall invoice the State separately for interest on delinquent amounts due. The billing shall reference the delinquent payment, the number of days interest to be paid and the applicable interest rate. [Ref. Sec 24-30-202(24), C.R.S., as amended.]

12. **Vendor Offset.** Pursuant to CRS 24-30-202.4, as amended, the State Controller may withhold payment for debts owed to state agencies under the vendor offset intercept system for: (a) unpaid child support debt or child support arrearages; (b) unpaid balance of tax, accrued interest, or other charges specified in Article 21, Title 39, CRS; (c) unpaid loans due to the Student Loan Division of the Department of Higher Education; (d) owed amounts required to be paid to the unemployment compensation fund; and (e) other unpaid debts owing to the state or any agency thereof, the amount of which is found to be owing as a result of final agency determination or reduced to judgment as certified by the State Controller.

13. **Assignment and Successors; Antitrust Claims.** The vendor shall not assign rights or delegate duties under this purchase order, or subcontract any part of the performance required under the purchase order, without the express, written consent of the State, which shall not be unreasonably withheld. This purchase order shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns. Assignment of accounts receivable may be made only with written notice furnished to the purchasing agency or institution.

14. **Indemnification.** In the event any article sold or delivered under this purchase order is covered by any patent, copyright, trademark, or application therefor, the vendor will indemnify and hold harmless the State of Colorado from any and all loss, liability, cost, expenses and legal fees incurred on account of any claims, legal actions, or judgments arising out of manufacture, sale or use of such article in violation, infringement or the like of rights under such patent, copyright, trademark or application. If this purchase order is for services, to the extent authorized by law, the vendor shall indemnify, save, and hold harmless the State, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees incurred as a result of any act or omission by the vendor, or its employees, agents, subcontractors or assignees arising out of or in connection with performance of services ordered by this purchase order.

15. **INDEPENDENT CONTRACTOR.** THE VENDOR SHALL PERFORM ITS DUTIES HEREUNDER AS AN INDEPENDENT CONTRACTOR AND NOT AS AN EMPLOYEE. NEITHER THE VENDOR NOR ANY AGENT OR EMPLOYEE OF THE VENDOR SHALL BE OR SHALL BE DEEMED TO BE AN AGENT OR EMPLOYEE OF THE STATE. VENDOR SHALL PAY WHEN DUE ALL REQUIRED EMPLOYMENT TAXES AND INCOME TAX WITHHOLDING INCLUDING ALL FEDERAL AND STATE INCOME TAX AND LOCAL HEAD TAX ON ANY MONIES PAID PURSUANT TO THIS CONTRACT. VENDOR ACKNOWLEDGES THAT THE VENDOR AND ITS EMPLOYEES ARE NOT ENTITLED TO UNEMPLOYMENT INSURANCE BENEFITS UNLESS THE VENDOR OR A THIRD PARTY PROVIDES SUCH COVERAGE AND THAT THE STATE DOES NOT PAY FOR OR OTHERWISE PROVIDE SUCH COVERAGE. VENDOR SHALL HAVE NO AUTHORIZATION EXPRESS OR IMPLIED TO BIND THE STATE TO ANY AGREEMENTS, LIABILITY, OR UNDERSTANDING EXCEPT AS EXPRESSLY SET FORTH HEREIN. VENDOR SHALL PROVIDE AND KEEP IN FORCE, WORKERS' COMPENSATION (AND SHOW PROOF OF SUCH INSURANCE UPON REQUEST) AND UNEMPLOYMENT COMPENSATION INSURANCE IN THE AMOUNTS REQUIRED BY LAW, AND SHALL BE SOLELY RESPONSIBLE FOR THE ACTS OF VENDOR, ITS EMPLOYEES, AND AGENTS.

16. **Communication.** All communications, including reports, notices, and advice of any nature, concerning administration of this purchase order, prepared by vendor for the state agency's use, must be furnished solely to the Purchasing Agent within the agency purchasing office.

17. **Compliance with Laws.** Vendor agrees to comply with all applicable federal and state laws, regulations and policies, as amended, including those regarding discrimination, unfair labor practices, anti-kick-back and collusion.

18. **Americans with Disabilities Act (ADA) Requirements.** If this solicitation contemplates the provision of state services to the public, the vendor shall, in addition to any other requirements under Title 11 of the Americans with Disabilities Act, comply with the Title 11 requirements of the Americans with Disabilities Act regarding the accessibility of the State's services and programs, as an explicit requirement. The vendor assures that, at all times during the performance of any resulting contract, no qualified individual with a disability shall, by reason of that disability, be excluded from participation in, or be denied benefits of, services, programs, or activities performed by the vendor for the benefit of the State.

19. **Insurance.** The vendor shall obtain, and maintain at all times during the term of this purchase order, insurance as specified in the solicitation or order, and shall provide proof of such coverage.

### 20. Termination For Default/Cause.

a. Except as otherwise agreed, the Uniform Commercial Code shall govern in the case of transactions in goods. In the case of services, if the vendor refuses or fails to timely perform any of the provisions of this purchase order, with such diligence as will ensure its completion within the time specified in this purchase order, the Purchasing Agent may notify the vendor in writing of the non-performance, and if not promptly corrected within the time specified, such officer may terminate the vendor's right to proceed with the purchase order or such part of the purchase order as to which there has been delay or a failure to properly perform. The vendor shall continue performance of the purchase order to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services elsewhere. Payment for completed services performed and accepted shall be at the purchase order price.

b. In the case of remedies exercised under this paragraph for services, or analogous remedies exercised under the Uniform Commercial Code for transactions in goods, the purchasing agency may withhold amounts due to the vendor as the Purchasing Agent deems to be necessary to reimburse the purchasing agency for the excess costs incurred in curing, completing or procuring similar goods and services.

c. In the case of either transactions in goods or services, the vendor shall not be in default by reason of any failure in performance of this purchase order in accordance with its terms if such failure arises out of acts of God; acts of the public enemy; acts of the State and any governmental entity in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather.

d. If after rejection, revocation, or other termination of the vendor's right to proceed under the provisions of the Uniform Commercial Code (in the case of transactions in goods) or this clause (in the case of services), it is determined for any reason that the vendor was not in default under the provisions of this clause, or that the delay was excusable, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the termination for convenience clause.

### 21. Termination For Convenience.

a. Cancellation Prior to Contract Formation. When this purchase order is not accepted by written acknowledgment, this purchase order may be canceled by written or oral notice to the vendor prior to shipment of goods or beginning of performance of services.

b. Termination After Contract Formation. Unless otherwise agreed in writing, in addition to the rights and remedies governing transactions in goods in the Uniform Commercial Code, the Purchasing Agent may when the interests of the purchasing agency so require terminate this purchase order in whole or in part, for the convenience of the agency or institution. The Purchasing Agent shall give written notice of the termination to the vendor specifying the part of the purchase order terminated and when termination becomes effective. Upon receipt of the notice of termination, the vendor shall incur no further obligations except to the extent necessary to mitigate costs of performance. In the case of services or specially manufactured goods, the State shall pay reasonable settlement expenses, the contract price or rate for supplies and services delivered and accepted, the reasonable costs of performance on unaccepted supplies and services, and a reasonable profit for that unaccepted work, in accordance with the cost principles promulgated in accordance with section 24-107-101, Colorado Revised Statutes, as amended. In the case of existing goods, the State shall pay reasonable settlement expenses, the contract price for goods delivered and accepted, reasonable costs incurred in preparation for delivery of the undelivered goods, and a reasonable profit for that preparatory work. The amount of the termination liability under this paragraph shall not exceed the amount of the purchase order price plus a reasonable cost for settlement expenses. The vendor agrees to submit a termination proposal as well as reasonable supporting documentation, cost and pricing data, and a certification required by section 24-106-101, C.R.S., as amended, upon request of the Purchasing Agent.

22. **Purchase Order Approval.** This purchase order shall not be deemed valid unless it is executed by the Purchasing Agent for the purchasing state agency or institution. The State shall have no responsibility or liability for products or services delivered or performed prior to proper execution hereof.

23. **Fund Availability; Federal Funds Contingency.** Financial obligations of the State of Colorado payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted and otherwise made available. If this purchase order is funded in whole or in part with federal funds, this purchase order is subject to and contingent upon the continuing availability of federal funds for the purposes hereof. If this purchase order contemplates the purchase of goods to be delivered in a single installment, the State represents that it has set aside sufficient funds to make payment under this purchase order in accordance with its terms.

24. **Choice of Law.** This purchase order is made in the State of Colorado. The laws of the State of Colorado shall govern in connection with the formation, performance and the legal enforcement of this purchase order. Unless otherwise specified in the solicitation or this order, venue for any judicial action arising out of or in connection with this purchase order shall be in Denver, Colorado. Vendor shall exhaust administrative remedies in § 24-109-106, Colorado Revised Statutes, as amended, prior to commencing any judicial action against the State.

25. **Uniform Commercial Code.** All references in this purchase order to the Uniform Commercial Code shall mean the Uniform Commercial Code as adopted by the State of Colorado at Title 4, Colorado Revised Statutes, as amended.

26. **Non-discrimination.** The vendor agrees to comply with the letter and spirit of all applicable state and federal laws respecting discrimination and unfair employment practices.